

SUPERFUND STATE CONTRACT
FOR IMPLEMENTATION OF FUND-LEAD REMEDIAL ACTION AT THE
EUREKA MILLS SITE, JUAB COUNTY, UTAH

BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY
AND
THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

A. Authority

This Superfund State Contract for Implementation of Fund-Lead Remedial Action at the Eureka Mills Site ("Contract") is entered into by and between the United States Environmental Protection Agency, Region 8 ("EPA") and the State of Utah ("State") Department of Environmental Quality ("UDEQ") pursuant to Sections 104(a)(1), (c)(2), (c)(3), and (d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601, et seq., as amended, the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 ("NCP"), the Utah Hazardous Substances Mitigation Act, Section 19-6-323, and other applicable laws and regulations, including 40 CFR Part 35, Subpart O, and 40 CFR Part 31. Words used in this Contract are as defined in CERCLA, 42 U.S.C. §§ 9601, et seq., and the regulations promulgated thereunder, unless otherwise stated or indicated.

B. Site Description and Background

The Eureka Mills Site ("Site") is located in the East Tintic Mountains of northeastern Juab County, Utah. The Site includes residential, commercial and undeveloped areas of the City of Eureka and adjacent mining areas in unincorporated Juab County. The residential areas, adjacent mining areas and non-residential areas are designated in the Record of Decision for Lead-Contaminated Soils for Operable Units 00 through 03 ("ROD").

The Site was proposed for listing on the National Priorities List ("NPL") June 14, 2001, and was added to the NPL on September 5, 2002. On September 30, 2002, EPA issued two Records of Decision for the Site. The Early Interim Action ROD ("IROD") identifies actions to be implemented to protect public health in the short term, while a long-term cleanup solution to address lead-contaminated soils is being simultaneously implemented. The selected remedy in the IROD includes the following components known as Public Health Actions ("PHAs"): (1) a voluntary annual blood testing program for children at risk; (2) educational outreach programs; and (3) a voluntary program for in-home soil and dust sampling.

The Lead-Contaminated Soils ROD selects a remedial action ("RA") for the long-term cleanup of the Site. The RA involves four components: (1) continued cleanup of lead-contaminated soils in residential yards; (2) cleanup of mine waste piles and other non-residential areas; (3) public health actions; and (4) institutional controls. EPA has identified several potentially responsible parties ("PRPs") for the Site and intends to negotiate settlement agreements for the past costs incurred and future work to be performed at the Site.

C. Purpose

1. The purpose of this Contract is to memorialize the respective responsibilities of EPA and UDEQ (collectively, the "Parties") with respect to Fund-Lead cleanup of the following areas during RA: (1) residential areas (as shown on the map attached hereto as Attachment A); (2) Chief Mine No. 1; (3) Chief Mill Site No. 1; (4) Chief No. 1 Mill Tailings/Chief Mill No. 1; (5) Eureka Hill Waste Rock; (6) Eagle and Blue Bell Mine, Transition and Dump; (7) Snow Flake Mine (8) Open Cell; (9) OU-2 (consisting of the Gemini Mine, Bullion Beck Mine and Bullion Beck Mill); (10) Drainage Gulches/Haul Roads and Sedimentation Ponds, excluding the Knightsville Drainage area; and (11) Secondary Water System & Well (the "Fund-Lead Areas") (the boundaries of the Fund-Lead Areas are depicted on the map attached hereto as Attachment A) during RA and long term Operation and Maintenance ("O&M") as described in the ROD and in the O&M Plan which is part of the Remedial Design as directed and authorized by CERCLA to the extent O&M is not performed in whole or in part by a PRP. The Fund-Lead Areas do not include: (i) those areas for which EPA has obtained funds furnished by a PRP for cleanup or (ii) areas cleaned up by PRPs themselves; areas (i) and (ii) may be within the boundaries of the Fund-Lead Areas depicted on Attachment A but are not intended to be a part thereof.
2. On the effective date of this Contract as determined pursuant to Paragraph Y, the State Superfund Contract for Implementation of Remedial Action at the Eureka Mills Site, Juab County, Utah between EPA and UDEQ, executed on behalf of EPA on August 25, 2003, (the "OU-2 SSC") shall terminate and be of no further force or effect. Outstanding responsibilities (work commitments, payment obligations etc.) under OU-2 SSC at the time of termination thereof shall be transferred to this Contract and performed or paid in accordance with the terms of this Contract.

D. Anticipated Process

1. Upon execution of this Contract and notification to EPA by UDEQ that UDEQ will provide the necessary 10% cost share pursuant to Section H.6, EPA will immediately proceed with RA activities for the Fund-Lead Areas that will meet the requirements of the ROD.
2. It is the expectation of the Parties that all obligations of the Parties arising under this Contract will be fully funded. EPA and UDEQ agree to use their best efforts to seek sufficient funding through their respective budgetary processes to fulfill their obligations under this Agreement.

3. EPA is the designated lead agency for the proposed Fund-Lead Areas Remedial Design/Remedial Action ("RD/RA") activities, with UDEQ serving in a support and oversight capacity. Since the State is responsible for a ten percent (10%) cost share of the actual cost of the Fund-Lead RA for the Fund-Lead Areas, less any PRP contributions and including any qualified State response costs as allowed by CERCLA Section 104(c)(5)(B), UDEQ's concurrence on the Fund-Lead Areas RD/RA activities is required under this Contract.
4. In accordance with CERCLA Section 104(c)(3)(A) and subject to the availability of sufficient funds appropriated therefore by its Legislature, the State will assure all future maintenance of the Fund-Lead Areas RA on the Site as provided in Section L for the expected life of such action as determined by the President. Subject to the provisions of Section L.2., *infra*, the State will assure such maintenance after EPA has completed its responsibilities, unless responsibility for O&M is assured by a PRP pursuant to an order or consent decree with EPA. Such O&M will consist substantially of the activities described on Attachment B of this Contract, to the extent such activities are applicable to the Fund-Lead Areas.
5. UDEQ will be provided an opportunity to participate in negotiations with PRPs as specified in the NCP and Paragraph 1 of Article S, *infra*.

E. RA Schedule

A Fund-Lead Areas RA schedule acceptable to both Parties shall be developed upon execution of this Contract. With the concurrence of both Parties, the schedule may be revised due to the lack of adequate funding, unidentified and unanticipated technical difficulties and other currently unknown factors.

F. Primary Contacts

1. The EPA designates Paula Schmittiel as its Remedial Project Manager ("RPM") responsible for the lead agency activities of planning and implementing RD/RA activities at the Site. EPA may replace its designated RPM at any time, with written notification to UDEQ within ten (10) calendar days, without amending this Contract.
2. UDEQ designates David Bird as the State Project Manager ("SPM;" sometimes referred to as the "State Project Officer" or "SPO") responsible for oversight of RD/RA activities and UDEQ responsibilities under this Contract. UDEQ may replace its SPM at any time, with written notification to EPA within ten (10) calendar days, without amending this Contract.

3. The U.S. Army Corps of Engineers ("USACE") under an Interagency Agreement with EPA is directly responsible for the procurement, management and oversight of the contractor who will be conducting the Remedial Action for the Fund-Lead Areas.

G. Responsibilities of the Parties

1. EPA, at its own expense, shall perform its responsibilities under this Contract.
2. EPA will use its best efforts to provide UDEQ with adequate funding for oversight of the Fund-Lead Areas RA through the Cooperative Agreement (Block Grant).
3. Subject to Section H.5. hereof, UDEQ shall reimburse the EPA for ten percent (10%) of the actual cost of the remedial action at the Fund-Lead Areas, as defined and agreed to in this Contract.
4. EPA shall consult with, and obtain the advance written concurrence of, UDEQ with respect to RD/RA and other activities associated with the Fund-Lead Areas remedy in order to complete the Fund-Lead Areas remedy as described in the ROD. This includes, but is not limited to, review and concurrence by UDEQ on Statements of Work; Work, Monitoring and Safety Plans; Remedial Design Drawings; Quality Assurance Project Plans and Operations and Maintenance Plans; and changes that could have an impact on future O&M activities. The plans required for the work under this Contract shall be consistent with the requirements of CERCLA, the NCP and applicable federal and state regulations, standards and guidance.
5. Change orders which cause the RA cost to exceed the total approved estimated cost of the Fund-Lead Areas remedy will require review and concurrence of the SPM and are subject to the conditions of Section H.3 of this Contract.
6. Disputes between EPA and UDEQ regarding changes in project scope and cost of the remedy shall be resolved by following the procedures outlined in Section X of this Contract.
7. The RPM, with concurrence of the SPM, may make changes to the scope of the project and to the RA schedule without amending this Contract, so long as such changes are within the scope of this Contract, do not significantly impact the Contract, and do not cause the costs of the remedy to exceed those specified in Section H of this Contract. The State shall not be obligated to pay its CERCLA Section 104(c)(3) contribution for an increase of costs due to EPA changes of project scope and remedy

unless written and advance concurrence on such changes is obtained from the UDEQ pursuant to Section G.

8. EPA, as the lead agency, shall arrange and pay for the services of contractors to perform the work for the Fund-Lead Areas described in the ROD and as contemplated in this Contract.

H. Cost Share, Payments and Management Assistance

1. Section 104(c)(3) of CERCLA, as amended, requires that EPA determine whether the facilities were operated by the State, a political subdivision thereof, or privately, in order to determine the State's cost share. EPA has determined that these facilities and associated waste materials were operated privately. Therefore the State's cost share of the total cost of the Fund-Lead Areas remedial action is ten percent (10%).
2. Subject to the limitations and conditions in Section G above and this Section H, the State agrees to pay ten percent (10%) of the actual cost of the Fund-Lead Areas remedy contemplated under the ROD and this Contract in annual payments as herein provided as remediation work on the Fund-Lead Areas is performed.
3. The total estimated cost of the remedy selected in the ROD for the entire Site (which includes both Fund-Lead Areas (for which the State has a ten percent (10%) cost share obligation) and areas which may be remedied by a PRP at its expense or which may be remedied by EPA utilizing funds provided by a PRP (for which the State has no cost share obligation)), as estimated by the EPA for all anticipated activities, is \$80 million. The cost estimate, adjusted to deduct for work to be paid for or performed by a PRP(s) as described above, establishes the approved upper limit for work to be performed under this Contract.
4. The estimated State cost share is \$8 million, less ten percent (10%) of the cost of cleanup of those areas where a PRP has paid, or has agreed to pay, EPA for the cost of the cleanup and less ten percent (10%) of the cleanup costs for areas where a PRP performs the cleanup. The total estimated financial obligation of the State to EPA under this Contract shall not be exceeded without formal written concurrence of the State. Any changes will be formalized in an amendment to this Contract, executed by the Parties.
5. Nothing in this Contract shall commit the State to the payment of money beyond funds appropriated and encumbered pursuant to law for the purposes specified in this Contract, including, but not limited to, funds for payment of the State's 10% share of the actual cost of remediation and funds for O&M activities.

6. Prior to commencement of construction in any calendar year (beginning in the year 2004), and more frequently if additional funds become available to EPA, EPA will notify UDEQ in writing of the amount of funds it expects to expend during that calendar year on Fund-Lead Areas RA, which notification will generally describe the work to be performed and the areas in which it is to be performed. Within forty (40) calendar days of receipt of such notification, UDEQ will inform EPA whether it will provide its 10% cost share of that amount or any portion thereof. It is understood that UDEQ, in considering whether it will provide its matching share, will take into consideration the availability of funds its legislature has appropriated and encumbered pursuant to law for the purposes of this Contract. Fund-Lead RA will not proceed to the extent UDEQ does not commit to payment of its 10% share of the cost of Fund-Lead RA.

7. Subject to the provisions of Subparagraph H.5 of this Contract, the State shall pay ten percent of the actual costs Fund-Areas RA as follows:

a. Following the end of each calendar year, EPA shall submit a bill to UDEQ for ten percent (10%) of the total Fund-Lead Areas actual RA costs incurred during the preceding calendar year, which costs shall be itemized in the EPA's monthly reports submitted pursuant to Paragraph W.1., *infra*. Billing will occur annually until the Fund-Lead Areas remedy is completed. The State shall pay those costs within sixty (60) calendar days of receipt of the EPA bill unless it requires additional information to support the bill or disputes all or any portion of the bill. If the State requires additional information, it shall promptly request the same and shall pay the bill within sixty (60) days following receipt thereof. If the State disputes all or any portion of the bill, it shall pay the portion thereof that is not in dispute and the balance shall be subject to the dispute resolution provisions of Paragraph X, *infra*.

b. All State cost share payments shall be in the form of a certified check or money order, payable to the U.S. Environmental Protection Agency and sent to:

Mellon Bank
EPA Region VIII
P.O. Box 360859M
Pittsburgh, PA 15251
Attention: Superfund Accounting

- c. The State or EPA may request a change in this payment schedule should funding requirements on any Superfund site in the State or the State Hazardous Substances Mitigation Fund change. Any change in the schedule shall be approved by both parties and be made by written amendment to this Contract.
- d. The State will notify the EPA's RPM within ten (10) calendar days after a payment has been sent to Mellon Bank.
- e. Any State monies expended as part of the Fund-Lead Areas remedy shall be evaluated for consideration as cost share credits per CERCLA Section 104(c)(5).
- f. This Contract creates no obligation for funding other than that described in this section. EPA understands that the State is making no representations, commitments, or assurances that further funding is available, and EPA agrees that it will not file an action against the State based on claims that the State represented that funding, other than that discussed in Sections H.2, H.3 and H.4 of this contract, was available.

I. Off-site Treatment, Storage, or Disposal, and Capacity Assurance

Off-site treatment, storage, or disposal is not contemplated except as incidental disposal (i.e., old batteries, etc.) as part of the Fund-Lead Areas RA for this Site. If off-site treatment, storage, or disposal of wastes is required, EPA shall require that all contractors and/or future bid respondents with responsibilities for handling and disposing of hazardous waste materials do so in accordance with all applicable Federal and State laws. EPA shall provide written notification to UDEQ prior to any off-site shipment of Site wastes and provide copies of all manifests, invoices, including total tonnage and volume estimates and measurements. If incidental off-site shipment of wastes is necessary, the State will assure capacity at an appropriate disposal facility for disposal.

J. Inspections

- 1. EPA and UDEQ will conduct joint pre-final and final inspections of the Fund-Lead Areas in accordance with 40 CFR Section 300.515(g). EPA and UDEQ will jointly develop written inspection protocols, which will pertain to both inspections and reporting thereof, prior to the end of the 2004 construction season.
- 2. Disputes arising due to disagreements regarding the determination of completion of specific components of the work shall be resolved using the dispute resolution process outlined in Section X.

K. Acceptance of the Remedial Action

1. Remedial Action Completion Report - The final Fund-Lead Areas RA Completion Report is equivalent to a Remedial Action Report. Generally, the final Fund-Lead Areas RA Completion Report documents Construction Completion for all Fund-Lead Areas at the Site. At the end of the RA for the Fund-Lead Areas, the RA Completion Report will be prepared by EPA. The Fund-Lead Areas RA Completion Report will be a compilation of the final inspection reports for each Fund-Lead Area. The final Fund-Lead Areas RA Completion Report will include: (a) information required for the final inspection reports as well as for the "Preliminary Closeout Report (Exhibits 2-3 and 3-3 of "Close Out Procedures for NPL Sites," OSWER Directive 9302.2-09A-P); (b) an explanation of how the "punch list" items were addressed; (c) "As-built" drawings; (d) a detailed schedule of milestones; (e) the volumes of contaminated material capped; (f) sampling results; (g) final costs for the Fund-Lead Areas RA; and (h) an explanation of how the institutional controls ("ICs") approved by EPA and concurred in by UDEQ were implemented. A certification that all components of the RA for the Fund-Lead Areas are operational and functional will be included in the RA Completion Report.
2. EPA will submit to UDEQ a "draft-final" copy of the Fund-Lead Areas RA Completion Report for review and comment. UDEQ will have forty (40) calendar days after submission to review and provide comments on it. After responding to UDEQ's comments, EPA will prepare and submit to UDEQ the final Fund-Lead Areas RA Completion Report.
3. UDEQ shall provide written acceptance or rejection of the final Fund-Lead Areas RA Completion Report within twenty (20) calendar days of receipt of the report. If UDEQ accepts the Fund-Lead Areas RA Completion Report, written notification shall be provided EPA to that effect. Should UDEQ reject the RA Completion Report, written reasons as to why it was rejected shall be provided to EPA within the above time frame. The dispute resolution process outlined in Section X of this Contract shall be invoked if resolution of UDEQ's concerns relative to the Fund-Lead Areas RA Completion Report cannot be resolved within a reasonable time frame upon receipt of UDEQ concerns by EPA. In the event UDEQ rejects the Fund-Lead Areas RA Completion Report and the Parties cannot agree after following the dispute resolution process outlined in Section X, the Fund-Lead Areas RA may be deemed operational and functional by EPA one-year after EPA's determination that construction is complete, in accordance with 40 CFR Section 300.435(f)(2).
2. EPA will perform a final reconciliation of all Fund-Lead Areas RA contracts expenditures for RA completion, including change orders.

contractor claims, or other expenditures to perform the Fund-Lead Areas RA and render it complete and functional. A copy of the final reconciliation shall be provided to UDEQ.

3. If and when the Site is considered for deletion from the NPL, copies of all documentation necessary to support the deletion decision will be supplied to UDEQ.

L. Institutional Controls and Future Maintenance of the Remedy

1. To the extent of its authority under applicable law, UDEQ assures that any ICs implemented by EPA as a component(s) of the Fund-Lead Areas RA will remain in place and be enforced during the life of the remedy. If an IC fails, EPA shall, with the concurrence of UDEQ, take such measures as are necessary to ensure protection of human health and the environment, including, but not limited to, establishment of other ICs and reopening the ROD if necessary and appropriate.
2. After EPA has completed its responsibilities in accordance with Section L.1, the State, in accordance with CERCLA Section 104(c)(3)(A) and Section 35.6105 (b) (1) of Subpart O of 40 CFR and subject to the availability of funds appropriated and encumbered pursuant to law for the purposes specified in this Contract, will assure all future maintenance of the Fund-Lead Areas RA for the expected life of such actions as determined by the President, unless such O&M obligations are ~~not~~ otherwise being performed by a PRP pursuant to an order or consent decree with EPA. It is understood that the State's obligation to assure maintenance of the RA will continue until the need for maintenance no longer exists.

M. Fund-Balancing

Pursuant to CERCLA Section 121(d)(4)(F), if UDEQ requests additional Fund-financed response at the Site, EPA shall evaluate the request against (1) available Fund monies, and (2) site prioritization, to determine whether the UDEQ's request is appropriate. This Contract does not commit EPA or the State to future funding for response actions at the Site beyond that agreed to herein.

N. National Contingency Plan

All activities conducted under this Contract shall be consistent with the NCP, and amendments thereto. The Parties also intend to follow all appropriate EPA policy and guidance and comply with any Applicable or Relevant and Appropriate Requirements ("ARARs").

O. Third Parties

This Contract is entered into by, and is relevant only to, the Parties that are signatories to it. It extends no benefit or right to any non-signatory persons, agencies, or organizations. EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. §§ 1346(b) and 2671-2680. In addition, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

P. Site Access and Permits

1. EPA and UDEQ, and their representatives, have authority for Site access pursuant to CERCLA §104(e). Each Party when obtaining access for itself shall include in any and all agreements access for the other Party. EPA and the State shall follow the approved health and safety plan for the Site.
2. When requested by EPA, UDEQ shall assist EPA in obtaining any permits necessary to satisfactorily complete the Fund-Lead Areas RA.
3. EPA shall not be responsible for any harm to any of the State's representatives or other persons arising out of, or resulting from, any act or omission by the State in the course of an on-site visit. The State shall not be responsible for any harm to an EPA representative, contractor, agent or other person arising out of, or resulting from, any act or omission by EPA in the course of an on-site visit.

Q. Community Relations Plan

Community relation's activities at the Site shall be conducted in accordance with the approved EPA Community Relations Plan and amendments thereto.

R. Access to Files

The Parties will provide for each other access to records pertaining to the Site upon written or oral request. A response to a request for records access shall be provided by the responding Party within fifteen (15) calendar days. If the responding Party cannot make the requested records available within fifteen (15) calendar days, it shall send a written explanation and proposed schedule to the requesting Party. Records which are exempt from the public availability requirements of the Freedom of Information Act, 5 U.S.C. Section 552(b), the Utah Government Records and Management Act, Utah Code Sections 63-2-101. et seq., or required to be withheld pursuant to EPA regulations regarding confidentiality of business information, 40 CFR Section 2.201, or which are confidential as privileged, may be withheld from disclosure unless a confidentiality agreement is signed by the Parties concerning such records.

S. Enforcement & Cost Recovery

1. The Parties shall cooperate in and coordinate any efforts to require CERCLA remedial actions and O&M by responsible parties within the meaning of Section 107(a) of CERCLA or to recover their respective costs of response actions and O&M for the Site, to the maximum extent practicable. EPA will consult with and involve UDEQ in negotiations with PRPs pursuant to 40 C.F.R. Part 300.520.
2. If EPA and UDEQ reach an agreement with a responsible party to undertake all or part of the Fund-Lead Areas RA and/or O&M contemplated by this Contract, this Contract shall be amended accordingly.
3. With respect to the claims which each Party may be entitled to assert under CERCLA against any responsible party for the reimbursement of any services, materials, monies or other thing of value expended by EPA and the State for remedial response actions or O&M at the Site, neither EPA nor the State shall enter into a settlement with or initiate a judicial action or administrative proceeding against such responsible party for the recovery of such sums except after having given written notice to the other Party not less than thirty (30) calendar days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings.
4. The State shall not be responsible for any increased remediation or O&M costs associated with any agreements or orders negotiated between EPA and responsible parties without UDEQ involvement and concurrence.
5. Execution of this Contract shall not constitute a waiver of either Party's right to bring an action against any person or persons for liability under CERCLA or any other statutory provision or common law.

T. Emergency Response Actions

Any emergency response activities conducted pursuant to Subpart E of the NCP shall not be restricted by the terms of this Contract. EPA, with the concurrence of UDEQ and subject to the restrictions of Section G.5 hereof, may amend or modify the remedies selected in the RODs during and/or subsequent to the emergency response actions.

U. Negation of Agency Relationship

Nothing in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between EPA and UDEQ. Any standards, procedures, or protocols prescribed in this Contract to be followed by EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product and the

actions contemplated by this Contract, and do not constitute a right to control the actions of EPA. EPA, including its employees, agents, and contractors, shall not represent or act on behalf of the State in any manner relating to the subject matter of this Contract, and the State, including its employees, agents, and contractors, shall not represent or act on behalf of EPA in any manner relating to the subject matter of this Contract.

V. Property Title and Interest Acquisition

1. In order to implement and complete the RA activities at the Site, EPA may acquire certain interests in seven (7) parcels of real property at or underlying OU 2 (hereinafter referred to as "OU 2 Real Property"). The OU 2 Real Property is identified specifically in Attachment C hereto. EPA may transfer OU 2 Real Property to a qualified responsible party through a settlement agreement negotiated before the completion of the RA. For OU 2 Real Property not transferred in this manner during RA, EPA will seek to transfer the interests in real property directly to any entity that the State or EPA identifies as willing to accept it when the RA is completed as contemplated in this Contract. The State agrees to act as guarantor for the property transfer and agrees to accept transfer of title if the qualified entity does not accept title. If neither the State nor EPA is able to identify a qualified entity willing to accept title, all interests in OU 2 Real Property acquired by EPA in the course of the RA effort and in EPA's possession at the completion of the RA shall be transferred to the State when the RA is completed as contemplated in this Contract. Pursuant to CERCLA Section 104(j), the State assures EPA that it will accept transfer of the interests. If the State elects to dispose of the interests acquired, it shall impose suitable restrictive controls on the property consistent with long term protection of the public interest.
2. EPA does not anticipate the need to acquire an interest in property in order to implement the Fund-Lead Areas RA other than the properties described in Subparagraph 1, above. Consequently, EPA is not requesting assurances from the State as required by CERCLA § 104(j)(2) (42 U.S.C.A. § 9604(j)(2)) for the acquisition of additional real property interests.

W. Reporting Requirements

1. EPA shall submit monthly progress reports to the SPM within twenty (20) calendar days following the end of each month, commencing with the start of the Fund-Lead Areas RA and for the duration of the project. These reports shall describe the work completed during the preceding period for each activity of the approved work plans associated with the ROD, a summary of all contractor requests for payment, a summary of change orders and claims processed, a description of project status relative to its schedule and budget, an estimate of variances (cost

and time) expected at project completion, and an itemization of costs incurred. The SPM shall provide written comments with any UDEQ concerns to the RPM within thirty (30) calendar days of receipt of such reports. During the winter months when there are no construction activities occurring, EPA may elect to reduce the frequency of progress reporting from monthly to quarterly to conserve costs.

2. Additional reporting requirements are described in Section J, "Inspections", and Section K, "Acceptance of the Remedial Action", of this Contract.

X. Dispute Resolution

Except where otherwise specifically noted, disputes between the Parties arising under this Contract that are not resolved informally shall be addressed using the following dispute resolution process:

1. To the extent that one Party (hereafter referred to as the "first Party") feels that adequate resolution to concerns or issues raised to the other Party ("second Party") have not been satisfactorily addressed, the first Party shall provide a written statement of the problem or issue to the second Party, along with any rationale or supporting documentation to support its position, for second Party review. The second Party shall respond in writing to the first Party, within fifteen (15) calendar days, of its position relative to the issue. The Parties will engage in discussions at the project manager level in an attempt to arrive at a consensus relative to the disputed issue and resolve the dispute.
2. If no resolution is reached within fifteen (15) calendar days of receipt of the second Party's response, the dispute shall be elevated to the Parties' respective management (Branch Manager/Branch Chief level) or their designees. The managers shall engage in discussions within fifteen (15) calendar days of notification of the ongoing dispute in an attempt to resolve the dispute.
3. If no agreement or resolution is achieved, upon the lapse of the fifteen (15) calendar days allowed under paragraph 2 above, the matter shall be referred to senior management (the UDEQ's Division of Environmental Response and Remediation Director and the EPA Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation) for discussion and resolution. Should resolution of the disputed matter still not be obtained, within fifteen (15) calendar days of senior management notification the matter shall be raised by each Party to the EPA Regional Administrator and UDEQ Executive Director for final, joint resolution of the dispute.

4. In the event the EPA Regional Administrator and the UDEQ Executive Director are unable to resolve the dispute, either Party may then seek resolution by a court of competent jurisdiction in Utah.
5. Time frames of the dispute resolution process may be extended upon mutual agreement of the Parties.

Y. General Provisions

1. All prior discussions, communications, and representations concerning the subject matter of this Contract are superceded by the terms of this Contract and, except as specifically provided herein, this Contract constitutes the entire agreement with respect to the subject matter hereof. All amendments to this Contract shall be in writing and agreed to by the signatories to this Contract, or their successors.
2. Amendments shall be made to this Contract when alterations to CERCLA-funded activities are required by law or when alterations impact the State's assurances.
3. In the event of a breach of this Contract, and except as otherwise provided herein, any Party affected by the breach may bring an action in an appropriate court of competent jurisdiction in Utah to enforce the terms of this Contract, recover any funds advanced under this Contract, recover any costs incurred due to a breach of this Contract, or terminate this Contract.
4. This Contract may be executed in multiple identical counterparts, and each counterpart, when so executed and delivered, shall constitute an original instrument, and all such separate counterparts shall constitute one and the same instrument.

Z. Duration

This Contract shall take effect upon execution by EPA and UDEQ and shall remain in full effect until Final Cost Reconciliation of the Fund-Lead Areas RA costs is performed by EPA's Finance Division for the remedy. Following completion of the Final Cost Reconciliation, EPA will prepare a final amendment to this Contract that will identify final actual Fund-Lead Areas RA costs and an estimate of the final State cost total, amounts received to date, and cost share payment due, if any. UDEQ shall have sixty (60) calendar days to review EPA's calculations. UDEQ shall provide in writing concurrence or reasons for disagreement with the EPA's State cost share calculation.

After Final Cost Reconciliation for Fund-Lead RA areas, any cash overpayment by the State to EPA in excess of the State's ten percent (10%) cost share shall be reimbursed to the State within sixty (60) days after completion of the Final Cost Reconciliation. Any approved credit remaining after Final Cost Reconciliation may not be reimbursed, but can be applied to other sites or substituted for previous cash payments. Any substituted cash payments shall then be reimbursed to the State by EPA.

This Contract may be terminated before the Fund-Lead Areas Remedial Action activities contemplated by this Contract are complete if the Parties agree to termination in writing.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract in duplicate. This Contract is effective upon the date of the last signature affixed below.

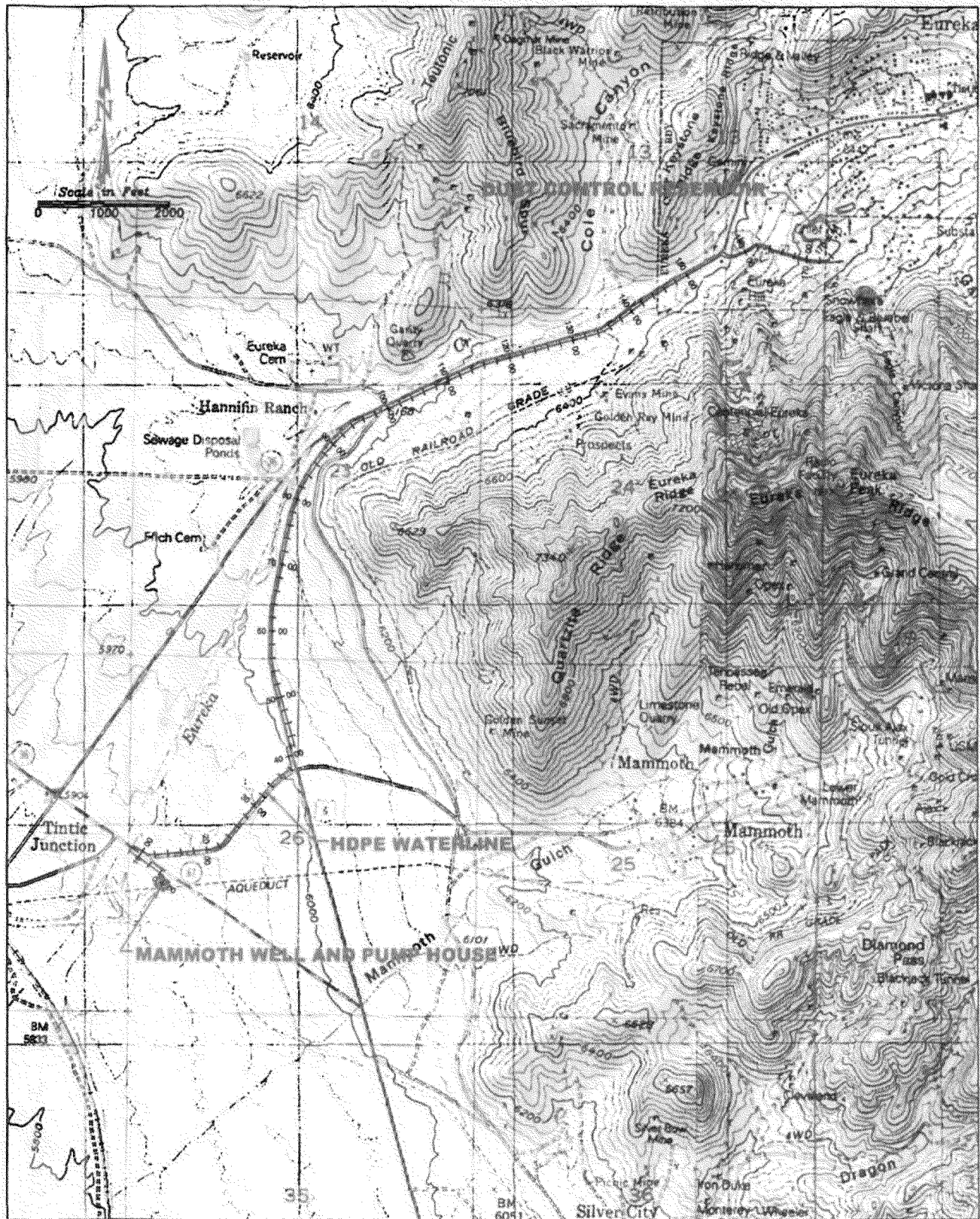
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Max H. Dodson JUL 12 2004
Max H. Dodson Date
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Dianne R. Nielson, Ph.D. 7/9/04
Dianne R. Nielson, Ph.D. Date
Executive Director
Department of Environmental Quality





HDR

ATTACHMENT A, MAP 2 OF 2

Eureka Mills Superfund Site, Eureka, UT
Fund Lead Area (Secondary Water System and Well)

Operations & Maintenance Work

The Operations and Maintenance work for OU02 and the Fund-Lead Areas will include the following:

1. Annual inspections of the mine waste areas, drainage areas, fences, signs and gates.
2. Inspections based on significant climatic or geological events. Events which may trigger such inspections shall be presented in the O&M Plan to be approved by EPA and concurred in by UDEQ.
3. Completion of associated documentation, checklists, and photos based on inspections.
4. Removal of sediments in drainages and transport the sediments to the open cell. Cover sediments placed in open cell with clean fill.
5. Repair areas of erosion and displacement of rock, except for those repairs necessary due to catastrophic circumstances.
6. Repair cover of access roads.
7. Repair and maintain fences, signs, barriers, and gates to ensure access remains limited.
8. Maintenance of Institutional Controls, approved and implemented by EPA and concurred in by UDEQ, in the form of a local ordinance regulating the excavation and disposal of contaminated soils within the Site boundaries.